

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION

APR 30 2021

In Re:

Fresh Acquisitions, LLC, *et al.*,
Debtors.

Chapter 11

Case No. 21-30721 (SGJ)

(Jointly Administered)

Hearing Date: May 6, 2021
Hearing Time: 9:30 a.m. (CT)

[Relates to Docket No. 71]

CLERK, U.S. BANKRUPTCY COURT
NORTHERN DISTRICT OF TEXAS

**MARICOPA COUNTY TREASURER'S OBJECTION TO INTERIM ORDER (I)
AUTHORIZING THE DEBTORS TO (A) OBTAIN POSTPETITION FINANCING AND,
(B) UTILIZE CASH COLLATERAL, (II) GRANTING LIENS AND SUPERPRIORITY
ADMINISTRATIVE EXPENSE CLAIMS, (III) GRANTING ADEQUATE PROTECTION,
(IV) MODIFYING THE AUTOMATIC STAY, (V) SCHEDULING A FINAL HEARING,
AND (VI) GRANTING RELATED RELIEF**

Maricopa County Treasurer ("MCT"), a secured tax lien creditor, by and through its undersigned counsel, hereby objects to the *Interim Order (I) Authorizing the Debtors to (A) Obtain PostPetition Financing and (B) Utilize Cash Collateral, (II) Granting Liens and SuperPriority Administrative Expense Claims, (III) Granting Adequate Protection, (IV) Modifying the Automatic Stay, (V) Scheduling A Final Hearing, and (VI) Granting Related Relief*. (DE 71) (the "Interim Order"). MCT objects to the Interim Order and the related Motion (DE 16) to the extent that Debtors seek to prime any secured personal property tax liens of Maricopa County.

1. MCT's Claims:

MCT will file its Proof of Claim (the "MCT Claim") prior to the governmental claims bar date. Currently, the amount owed by Debtor OCB Restaurant Company LLC aka "Old Country Buffet" is \$14,544.13 for prepetition taxes, which amount includes 2017, 2020

and estimated 2021 taxes. Interest accrues at the statutory rate of 16% per year simple, if not timely paid, until paid in full. See 11 U.S.C. § 511 and A.R.S. § 42-18053.

Old Country Buffet

Property Address	Parcel	Tax Year	Tax Amount
9820 Metro Parkway West, Phoenix, AZ	931-23-340	Estimated 2021	\$2,037.78
		2020	\$1,599.29
17125 N. 79th Avenue, Glendale, AZ	934-69-959	Estimated 2021	\$1,668.12
		2020	\$1,214.84
6625 E. Southern Avenue, Mesa, AZ	942-58-681	Estimated 2021	\$2,455.10
		2020	\$2,033.30
1855 S. Stapley Drive, Mesa, AZ	944-58-824	2017	\$3,535.70
			\$14,544.13

2. Objection:

MCT objects to the Interim Order and the related Motion to the extent that they seek to prime MCT's tax liens on Debtors' personal property located in Maricopa County, Arizona. Arizona law provides the following.

- a. The personal property tax liens attached on January 1 of the respective tax year and the taxes are not discharged until the taxes and interest are paid in full or title to the property vests in a purchaser of the property for taxes. A.R.S. §§ 42-17153 and 42-19106. Accordingly, the liens for personal property taxes encumbering the property cannot be removed until the personal property taxes are paid in full.
- b. The tax liens are "prior and superior to any other liens of every kind and description regardless of when another lien attached." A.R.S. § 42-19106¹.
- c. Interest accrues at the statutory rate of 16% per annum until the taxes are paid in full. 11 U.S.C. § 511 and A.R.S. § 42-18053.

¹ See also A.R.S. § 42-17153.

1 d. "If the tax has not been paid on property sold at judicial sale, or sold by an
2 executor, administrator, guardian or trustee, the person making the sale shall
3 pay the taxes, penalties and costs from the proceeds of the sale." A.R.S. § 42-
4 18059.

5 e. "It is unlawful for the owner, a lienholder, a conditional vendor or any other
6 person to knowingly sell or transfer personal property or remove it from its
7 location until the taxes on the property are paid." A.R.S. § 42-19107.

8 f. "The tax on personal property is a debt against the owner to whom the property
9 is assessed and against the owner's successors and assigns." A.R.S. § 42-
10 19117(A). If the taxes are not fully paid, the Treasurer shall bring an action in
11 court against the owner and the owner's successors and assigns, or any of
12 them, for collection of the tax and costs. A.R.S. § 42-19117(B).

13 WHEREFORE, MCT objects to the Interim Order and the related Motion to the
14 extent that they seek to prime any MCT tax liens.

15 RESPECTFULLY SUBMITTED this 29th day of April, 2021.

16
17 ALLISTER ADEL
MARICOPA COUNTY ATTORNEY

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1 ORIGINAL of the foregoing E-FILED
2 this 29th day of April, 2021, with:

3 Clerk, United States Bankruptcy Court
4 Northern District of Texas
1100 Commerce Street, Room 1254
Dallas, TX 75242

5 COPY of the foregoing mailed/e-mailed,
6 this 29th day of April, 2021, to:

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20 /s/ Marcy Delgado